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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(CRL) 2349/2016 & Crl.M.A.No.12256/2016

BIPUL KUMAR

..... Petitioner

Through Mr.Dev Shekhar, Adv.

versus

STATE (NCT OF DELHI) & ANR

..... Respondents

Through Mr.Piyush Singhal for Mr.Ashish Aggarwal, ASC for State.

Ms.Anuradha Dixit, Adv. for R-2.

SI Satish from P.S. Sarita Vihar.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

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11.01.2018

1 Petitioner is aggrieved by the judgment dated 02.6.2016 vide which the Appellate Court while endorsing the order passed by the learned Metropolitan Magistrate had directed the appellant to pay a sum of Rs.15,000/- per month to his estranged wife. Petitioner is aggrieved by the order. His submission is that both the courts below have arrived at a perverse finding which needs to be set aside. Submission is that the Appellate Court had noted that Rs.50,000/- is the monthly income of the petitioner and his monthly expenditure is Rs.69,024/-; if this was the position how earning of Rs.80,000/- per month has been arrived by the Appellate Court is unfounded. The maintenance granted @ Rs.15,000/- per month is excessive. Impugned order is liable to be set aside.

2 Respondent nos.1 and 2 are represented. Learned counsel appearing for respondent no.2 submits that the appellant is not abiding by the order of the Trial Court and the Appellate Court and respondent no.2 who was being supported by her father has since died. She is suffering as she has a grown up daughter and has no means either to support herself or her daughter. The impugned order in no manner calls for any interference.

3 Record shows that the parties had been married in the year 1992. They were working together in the same office; pursuant to which they had developed a love relationship and got married. The petitioner was married earlier; his first wife was living in the village. The parties had a child born out of their wedlock. She was born in the year 1994. Since the relationship between the parties was no longer cordial, divorce proceedings were initiated by respondent no.2; petitioner had filed a petition under Section 9 of the Hindu Marriage Act.

4 The impugned order has arisen out of the complaint case filed by respondent no.2 under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (D.V.Act). Respondent no.2 again made efforts to settle the dispute with her husband and started living back with him; thereafter relations again soured.

5 Both the courts below have arrived at a clear finding on the basis of the affidavits of income filed by the petitioner. The income affidavit of the petitioner had been perused by the first court. The petitioner had admitted that he has expended a sum of Rs.69,024/- in one month. His salary slip reflected his total earning of Rs.50,269/-.

The first Court and the Appellate Court had drawn presumption that such like persons have a tendency to suppress the true income. It was unbelievable that a person having monthly income of Rs.50,269/- would be able to spend Rs.69,024/- per month. Inference was that the petitioner was gainfully employed and has considerable wealth and assets; he had a high standard of living. The estranged wife was also entitled to the same standard.

6 The Trial Court has accordingly granted maintenance of Rs.15,000/- per month; this was the subject matter of an appeal before the Sessions Judge. The Sessions Judge had also noted the facts in the same perspective. The affidavit filed by the petitioner before the Trial Court of his income and expenditure had again been scrutinized. The Appellate Court had rightly concluded that a person spending Rs.70,000/- per month could not be earning Rs.50,000/- per month and thus the presumption of income of the petitioner at Rs.80,000/- per month was not on higher side. At this stage some kind of guess work has to be resorted to by the Courts below; this would be a guess work on the basis of the record (the affidavit of income and expenditure of the petitioner) and noting the fact that the petitioner also has a first wife; two shares of the income were to be retained by the petitioner; one share for the first wife and one share for respondent no.2. The maintenance fixed @ Rs.15,000/- per month was thus held not to be excessive.

7 This Court notes that the two fact finding courts have returned finding of facts on the basis of evidence which was adduced before it. The finding arrived at by the two courts below cannot in any manner

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said to be perverse. It was a fair and judicial exercise of the discretion vested in the two courts below. A man spending almost Rs.70,000/- per month (as is evident from his income and expenditure affidavit) should have no difficulty in paying a sum of Rs.15,000/- per month to his estranged wife. Impugned order called for no interference. Petition is without any merit. Dismissed.

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INDERMEET KAUR, J

JANUARY 11, 2018

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